Supreme Court, U.S.
FILED
JUN 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1912

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

MIMI MARR,
Appellant

v.

THE STATE OF TEXAS,
Appellee

ON PETITION FOR WRIT OF CERTIORARI
FROM THE TEXAS COURT OF APPEALS,
TENTH SUPREME JUDICIAL DISTRICT

APPENDIX

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

MIMI MARR,
Appellant

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THE STATE OF TEXAS,
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APPENDIX

Appendix A

Below is the judgment in the numbered cause set out herein to be entered in the Minutes of this Court as of the 7th day of March, 1985:

10-84-145-CR MIMI MARR v. THE STATE OF TEXAS - ON APPEAL FROM 13TH DISTRICT COURT OF NAVARRO COUNTY - AFFIRMED - Opinion by Chief Justice McDonald:

"This cause came on to be heard on the transcript of the record of the Court below, and the same being considered, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the Judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and

Appendix B

Below is the opinion in the numbered cause set out herein of the Texas Court of Appeals, Tenth Supreme Judicial District, as of the 7th day of March, 1985:

AFFIRMED 7 MARCH 1985

NO. 10-84-00145-CR

TRIAL COURT #21,761

IN THE

COURT OF APPEALS

FOR THE

TENTH SUPREME JUDICIAL DISTRICT

OF TEXAS AT WACO

MIMI MARR,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From 13th Judicial District Court
Navarro County, Texas

OPINION

This is an appeal by defendant Marr from conviction for theft of property (value not less than $750 nor more than $20,000), for which a 2-year probated sentence was assessed.

Defendant Marr owned an apartment complex. Tim and Kim Cofer leased an apartment for 6 months for $350 per month by written lease. Such lease provided landlord would give 30 days written notice of any rent raise, and tenant would give 30 days written notice of intent to vacate. The lease further

provided that when the 6 months expired it was automatically renewed on a month to month basis. The 6 months primary term expired on August 31, 1983, but the lease continued on the month to month basis. The Cofers paid their rent each month and on time. After Ms. Cofer paid her February, 1984, rent of $350 on February 5, 1984, defendant Marr told Ms. Cofer the rent was going up to $385 per month plus $8 per month cable charge. Ms. Cofer then told defendant they [the Cofers] would have to move; defendant then told Ms. Cofer if they [the Cofers] left without proper notice she [defendant] would be entitled to receive additional payments. The Cofers found another place to live and commenced moving some of

their belongings to the new place during February. When Ms. Cofer came home on February 24, 1984, many belongings were gone and there was a note from defendant stating: "Your rent is delinquent under the terms of your lease contract. You owe $438 for the following period of March of '84".

The Cofers contacted the District Attorney who with a search warrant located the Cofers' furniture, and the District Court returned same to them. Mr. Cofer filed a theft complaint against defendant and the Grand Jury indicted her: "[defendant] did then and there intentionally, knowingly and unlawfully appropriate by acquiring and otherwise exercising control over property other than

real property, to-wit: one 4-piece table set, one 6-shelf wood and glass etagere, eleven cushions, one dresser mirror, and one Sound Design stereo with two speakers, and one stereo table, of the value of more than $750, and less than $20,000 from Kim Cofer without the effective consent of Kim Cofer, the owner thereof, and with intent to deprive said owner of said property".

As noted, defendant was convicted and punishment assessed at 2 years in the Texas Department of Corrections, probated.

Defendant appeals on 2 grounds of error.

Ground 1 asserts: "The charge was fundamentally erroneous in that it authorized conviction for conduct

which was an enlargement upon the allegations in the indictment."

The trial court's charge in pertinent part reads:

"I. A person commits the offense of theft if he unlawfully appropriates property with intent to deprive the owner of property.

"II. So that you may better understand the nature of the offense with which the defendant is charged, I now define certain terms and words.

'Appropriate' means: (a)* * * or (b) to acquire or otherwise exercise control over property other than real property. * * *

"III. Therefore, if you believe from the evidence beyond a

reasonable doubt that Kim Cofer was the ower of the property, to-wit: 1 4-piece table set, 1 6-foot shelf wood and glass etagere, 11 cushions, 1 dresser mirror, 1 Sound Design stereo with 2 speakers, and 1 stereo table, of the value of more than $750 and less than $20,000, and that the defendant Mimi Marr did in Navarro County * * * on the 24th day of February, 1984, appropriate said property without the effective consent of the said Kim Cofer, and with intent to deprive said owner of said property, you will find the defendant guilty. If you do not so believe or if you have a reasonable doubt thereof, you

will find the defendant not guilty".

We fail to perceive any error in the trial court charge; in any event, defendant did not object to the charge, and the error is waived. No fundamental error is shown. White v. State, CA (Dallas) 632 S.W.2d 752; Jackson v. State, Ct. Crim. Appls, 571 S.W.2d 1.

Ground 1 is overruled.

Ground 2 asserts: "The trial court committed error in overruling [defendant's] requested instruction".

Defendant requested an instruction to the jury: "You are instructed and if you believe that at the time the accused took the property there was a reasonable belief that said property was

available for the taking pursuant to the rental contract signed by Tim and Kim Cofer, or if you have a reasonable doubt thereof, you will acquit the accused".

The trial court refused such instruction.

The trial court charged the jury on the statutory requirements of criminal intent in a theft case: "A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious object or desire to engage in the conduct or cause the result".

Ground 2 is without merit and is overruled.

AFFIRMED

FRANK G. McDONALD
Chief Justice

DO NOT PUBLISH

Appendix C

Judgment of the Texas Court of Criminal Appeals, entered on January 25, 1989:

NO. 0210-88

IN THE

COURT OF CRIMINAL APPEALS

OF TEXAS

AUSTIN, TEXAS

MIMI MAR,

Appellant

v.

THE STATE OF TEXAS,

Appellee

JUDGMENT

COA #: 10-84-00142-CR

Thomas Lowe, Clerk

Petition for Discretionary Review has
been REFUSED.

On this day, the Appellant's

STATE: Matt, Mimi

RE: Case No. 0210-82

COURT OF CRIMINAL APPEALS

OFFICIAL NOTICE